In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE PEOPLE OF PORTO RICO, PLAINTIFF in Error,
v.
BONOCIO RAMOS, DEFENDANT IN ERROR.

No. 390.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

MEMORANDUM FOR PLAINTIFF IN ERROR.

This was an action of ejectment and damages for mesne profits, brought against the People of Porto Rico without its consent, and sustained over its resistance (Amended Complaint R. 8; Demurrer challenging jurisdiction R. 9–10). Objection, *in limine*, to the Court's jurisdiction was overruled (R. 15) and the case allowed to go to the jury on issues of fact irrelevant to the present review. The jurisdictional objection was again made and overruled on a motion for a new trial, and judgment entered against Porto Rico for the disputed land and six thousand dollars damages (R. 17; praecipe for execution R. 46). To review this judgment the case is now here on writ of error.

The sole issue here is the jurisdiction of the lower court to entertain this suit against Porto Rico without its consent and against its active objection (Assignments 1 & 2, R. 47). This issue was decided below against Porto Rico in April and June, 1912 (R. 14 and 46). At that time, the suability of Porto Rico was still an open question. Since then—specifically since February 24, 1913—it has, of course, been settled that Porto Rico enjoys the exemption of a political sovereignty not to be sued without its consent (*Porto Rico* v. *Rosaly*, 227 U. S. 270). The *Rosaly* case is absolutely controlling of the present case, and necessarily calls for its reversal.

Conclusion.

It is respectfully submitted that the judgment of the lower court should be reversed, with instructions to the District Court of the United States for Porto Rico to dismiss the case for want of jurisdiction.

FELIX FRANKFURTER,
Law Officer,
Bureau of Insular Affairs.

FEBRUARY, 1914.

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No. 390.

THE PEOPLE OF PORTO RICO, APPELLANT,

vs.

BONOCIO RAMOS, APPELLEE.

BRIEF FOR APPELLEE.

In the record in this case there are seven assignments of alleged error, but several of them are merely cumulative and seem to have been taken as a matter of caution to preserve the record and not for the purpose of alleging distinct error.

The first three assignments of error present exactly the same question for decision by this honorable court, and we therefore consider them together and address our argument to them as a whole.

The three assignments of error referred to are as follows:

> "1. The court erred in overruling the demurrer to the complaint filed in the above-entitled action."

"2. The court erred in entertaining jurisdiction of the above-entitled cause, because for all necessary purposes of government, the defendant, The People of Porto Rico, is a sovereign and not liable to suit without its consent."

"3. The court erred in entertaining jurisdiction in the above-entitled cause, because this is a suit between plaintiff, a citizen of Porto Rico, and The People of Porto Rico, a body politic and corporate, organized under an act of Congress; both plaintiff and defendant being citizens of Porto Rico within the meaning of the act of Congress conferring jurisdiction upon the District Court of the United States for Porto Rico."

The purpose of these three assignments of error is to challenge the jurisdiction of the District Court on the ground that no suit can be maintained against The People of Porto Rico without their consent. As a general proposition this we do not dispute. In fact this court has so held in the case of The People of Porto Rico *vs.* Manuel Rosaly y Castillo, decided at the October term, 1912. But we think the present case widely different from that, and the general and unqualified proposition that The People of Porto Rico cannot be sued without their consent we think is not a question properly raised by this record.

But before considering this question in its other aspects we desire to direct the attention of the court to the manner in which The People of Porto Rico became a party to this cause.

Near the bottom of page 7 of the record it appears that a representative of the Attorney General of Porto Rico appeared in the District Court and informed the court that The People of Porto Rico were interested parties to this action, and upon such representation the court ordered that The People of Porto Rico be made a party defendant herein.

Again, near the middle of page 9 of the printed record it appears that the Attorney General of Porto Rico entered a general appearance for The People of Porto Rico. By doing so did he not submit to the jurisdiction of the District Court and estop himself from subsequently questioning the jurisdiction of that court? We submit that by such general appearance as attorney for The People of Porto Rico he admitted the jurisdiction of the District Court, consented to the suit on behalf of The People of Porto Rico, who had been previously made a party to the cause by the action of his assistant as set forth near the bottom of page 7 of the printed record.

In the Rosaly case The People of Porto Rico were defendants in the first instance. That cause was begun by the plaintiff against The People of Porto Rico, as appears from the first sentence of the opinion of Mr. Chief Justice White in that case. The present case was begun on November the twelfth, nineteen hundred and nine, not against The People of Porto Rico, but against Eduardo Wood, who was a subject of Great Britain, as judicial administrator for the estate of Eliza Kortright. After the death of Eliza Kortright it developed that she had left no heirs and had died intestate, and her estate therefore escheated to the State, to wit, The People of Porto Rico. The Attorney General of Porto Rico, in November of the following year and after the court had acquired jurisdiction of the parties by virtue of diversity of citizenship, then applied to the District Court for a postponement of this case, which had been commenced against the judicial administrator, to give himself time to investigate and determine whether The People of Porto Rico had any interest in the matter. Such postponement was granted, and the Attorney General concluding that The People of Porto Rico were interested, and on his so advising the court an order was entered making The People of Porto Rico a party defendant.

We think it vastly different to sue The People of Porto Rico and to have The People of Porto Rico subsequently

made a party after a suit has commenced against another defendant, who at the time of filing the suit was the only necessary party defendant. There is no dispute but that the District Court had jurisdiction of the original parties, and that jurisdiction having once attached cannot be ousted by the formal making of The People of Porto Rico a subsequent party.

There is no doubt but that The People of Porto Rico have become the sole beneficiaries of the estate of Eliza Kortright. This case was originally between the appellee Ramos and the administrator of Eliza Kortright. The People of Porto Rico were subsequently made parties defendant on motion of their Attorney General. Ramos can look only to the estate of Eliza Kortright to satisfy his decree. That estate has escheated to The People of Porto Rico. And now The People of Porto Rico, having all of the assets of Eliza Kortright, say in effect to Ramos, you cannot look to these assets to satisfy your just demands, because we have them and we are going to hide behind the sacred temple of sovereignty. It is admitted that this court has held that The People of Porto Rico can only be sued with their consent. But it is denied that The People of Porto Rico, when made a subsequent party to a suit already instituted against another defendant, can plead its attributes of sovereignty in such a case as this.

This suit is not really against The People of Porto Rico. It is against the assets of Eliza Kortright. Had Eliza Kortright lived the suit would have been against her, and the District Court would have had undisputed jurisdiction. If the estate of Eliza Kortright had not been administered, the suit would have been (as it was actually begun) against her administrator, and the District Court would have had undisputed jurisdiction (and actually did so have). Had Eliza Kortright left legal heirs surviving her the suit would have been continued against them and the jurisdiction of the District Court been undisputed, notwithstanding what their citizenship might have been. Now, can it be held that

the mere fact that Eliza Kortright left no legal heirs surviving her, and her estate escheating to The People of Porto Rico, and The People of Porto Rico being substituted as a party defendant in place of the judicial administrator in a cause already begun against him, that the jurisdiction of the District Court is ousted and the courts of justice forever closed against this appellee here, because The People of Porto Rico have been held in an entirely different case to have the attributes of sovereignty?

We think not, and we submit that this case is entirely different from the Rosaly case, in which The People of Porto Rico were the ORIGINAL parties defendant. In reality the present case is against the assets of Eliza Kortright, which by peculiar and unusual circumstance have fallen into the possession of The People of Porto Rico. The court must look to the substance of this case and not to the mere form.

In the law of escheat, while there is some conflict of authority, the general rule seems to be clear that the State takes escheated property charged with all of the valid debts and liabilities of the intestate, and creditors may enforce such claims against the property in the hands of the State, provided they are presented before being barred by the statutes of limitation.

Mobile Cong. Church *vs.* Morris, 8 Ala., 182.
Mooers *vs.* White, 6 Johnson's Ch. (N. Y.), 360.
Watson *vs.* Lyle, 4 Leigh (Va.), 236.

The State takes only the title which the intestate had and in the same condition, with all of the privileges and appurtenances and subject to all liens and encumbrances.

Casey *vs.* Inloes, 1 Gill (Md.), 430.
4 Kent Comm., 427.
3 Washburn on Real Property (6th ed.), 64.

In the present case, therefore, the right of The People of Porto Rico to the escheated estate of Eliza Kortright is necessarily subject to this suit, as The People of Porto Rico

took only such title as Eliza Kortright had, and if her title was bad to the land which is the subject-matter of this suit and was subject to ejectment by Ramos, the title that the State now claims is bad and is subject to the same ejectment.

> "The principle seems to be a universal one, that, if land escheats to the State, the latter takes the title which the party dying had, and none other."
> 3 Washburn on Real Property, 64.

> "It takes it, moreover, in the plight, and acquires it to the extent, to which the proprietor held it."
> 3 Washburn on Real Property (6th ed.), 64.
> 4 Kent Comm., 427.
> See note to case of Hamilton *vs.* Brown, U. S. 40; Law. Ed., 691.

We contend that the very act of the State in receiving and accepting the assets of Eliza Kortright in itself is a consent that creditors or adverse claimants may sue the State, if necessary, to enforce their rights against the escheated assets.

Our contention is in this case that the parties to the original suit being citizens of different States, to wit: the plaintiff a citizen of Porto Rico and the defendant as well as the deceased Eliza Kortright a British subject, and the jurisdiction of the District Court of the United States for Porto Rico having completely attached to the controversy, having so attached, it could not be devested by any subsequent events, and the court had full authority to proceed to a final determination of it, and if after the commencement of the suit the original defendant had been substituted by a citizen of Porto Rico the jurisdiction of the court would not be ousted by such change of citizenship in the parties.

Clarke *vs.* Mathewson *et al.*, 12 Peters, 163.
Morgan's Heirs *vs.* Morgan, 2 Wheat., 290-297.

The defendant Eduardo Woods was undisputedly in possession of the premises at the time the suit was brought, and consequently the plaintiff was not bound to look beyond the

person who, by his occupation of the disputed premises, was holding adversely to his claim, and if The People of Porto Rico were thereafter permitted to defend, that fact should not be sufficient to oust the jurisdiction which had already attached.

Phelps *vs.* Oaks, 117 U. S., 236.

If when this suit was brought the court acquired jurisdiction of the parties, no subsequent change of the parties can affect that jurisdiction.

In an action of ejectment, where the jurisdiction of the court has completely attached against the tenant in possession, the substitution of the landlord as a defendant for such tenant will in no way affect or defeat the jurisdiction of the court.

Hardenbergh *vs.* Ray, 151 U. S., 112.

As heretofore stated, when the case was filed in the District Court the parties thereto were Bonocio Ramos, who is a citizen of Porto Rico, plaintiff on one side, and Eduardo Woods, a British subject, as judicial administrator, defendant on the other, and we submit that this court has repeatedly held that no subsequent act can oust the court of jurisdiction.

The jurisdiction depends upon the state of things at the time the action is brought, and after it is once vested it cannot be ousted by a subsequent change of residence of either of the parties.

Mollan *et al. vs.* Torrance, 9 Wheaton, 535.

Thus it was also adjudged by this court that no change in the residence (citizenship) or condition of the parties can take away a jurisdiction which has once attached.

Dunn *vs.* Clarke, 8 Peters, 1.
Conolly *vs.* Taylor, 2 Peters, 555.

The plaintiff in this case, beyond question, had a substantial and real controversy with the original defendant,

Eduardo Woods. The object and purpose of the action was to recover possession of the tract of land in the visible and actual occupation of said Eduardo Woods, and it seems clear to us that no subsequent substitution of The People of Porto Rico as defendant could in any way affect or defeat the jurisdiction of the court, which had completely attached.

The fourth assignment of error is as follows:

> "The court erred in sustaining the objection of counsel for plaintiff to the introduction in evidence of the record, files, and proceedings in the case of Eliza Kortright y Kenny *vs.* Bonocio Ramos, No. 65, Law."

If ever a court did not err it was in the ruling complained of in this assignment of error. Throughout the trial of this case counsel for The People of Porto Rico sought to raise a legal imputation that the fifty acres which are the subject-matter of this suit constituted a part of another tract of eighty acres which was litigated beween Eliza Kortright and Bonocio Ramos in 1901, and which was the case No. 65, Law, referred to in the assignment of error. This imputation was sought to be used as the basis of a plea of *res adjudicata*.

The record, files, etc., of the case No. 65, Law, tried in 1901, were offered in evidence by counsel for The People of Porto Rico for the purpose of showing that Ramos filed in his defense in that case. As eighty acres of land were the subject-matter of that suit and fifty acres of land are the subject-matter of the present case, there was absolutely nothing to show that the fifty acres had ever been in litigation. There was no evidence of any kind to show that the fifty acres were part of the eighty acres. The only evidence on that point was that the fifty acres were not a part of the eighty acres which had been litigated in the former case. Ramos himself so testified (Record, pp. 30 and 31). The court, however, temporarily admitted the record, files, etc., subject to connection, the trial judge using this language:

> "They will be admitted temporarily subject to connection; if you will tell me that you will connect them with other evidence to show except by inference that the parcels are identical, I will admit them, but unless you mean to follow it by other evidence to show that these fifty acres were a part of those eighty acres, they will be excluded."
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> **Record, p. 30.**

Counsel for The People of Porto Rico was unable to produce any other evidence, and at the conclusion of the testimony, on motion of Ramos' counsel, the record, files, etc., were, of course, excluded.

The fifth assignment of error is as follows:

> "The court erred in sustaining the objection of the attorney for the plaintiff to the question propounded on behalf of the defendant on the cross-examination of the witness Bonocio Ramos as to whether or not upon the trial of the case of Eliza Kortright y Kenny *vs.* Bonocio Ramos, No. 65, Law, in nineteen hundred and one, he did not introduce as his muniment of title the deed marked Exhibit "A" which he now introduces as his title of ownership to the land involved in this action."

After the examination and cross-examination of Bonocio Ramos, who testified as a witness in his own behalf, had been completed, counsel for The People of Porto Rico sought to recall him for further cross-examination, to ask him the question set out in this assignment of error.

By this question he sought to show that the same deed that Ramos presented as evidence of his title to the fifty-acre tract here in litigation was used by him in his defense to the action of ejectment concerning the eighty-acre tract in 1901; in short, that he now claims the fifty-acre tract under the same deed that he formerly claimed the eighty-acre tract from which Eliza Kortright ejected him in 1901.

In the first place, this question was improper cross-examination. In the second place, it was immaterial, because the deed in question was not the only title and not the sole defense in the case in 1901. No evidence was offered to show that the deed was the only defense made in the eighty-acre suit. In order to make this question material it would be necessary to lay a proper foundation by showing that the deed was the only defense made in the eighty-acre suit in 1901. This foundation was not laid, because the real facts did not permit it. The question was clearly not competent and was properly excluded by the court.

The sixth and seventh assignments of error present no new question for decision by this court. The plaintiff, in his complaint, stated a case clearly entitling him to the relief prayed for, fully sustained his case by his evidence, and the court could have had no alternative upon the verdict of the jury than to enter a judgment against the defendant.

It is submitted that there is no reversible error in the record, and the judgment should be affirmed.

Respectfully submitted,

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